

CENTER FOR INSTITUTIONAL REFORM AND THE INFORMAL SECTOR

University of Maryland at College Park

Center Office: IRIS Center, 2105 Morrill Hall, College Park, MD 20742
Telephone (301) 405-3110 • Fax (301) 405-3020

TRANSITION, CONSTITUTION-MAKING, AND SEPARATION IN CZECHOSLOVAKIA

November 1994

Jon Elster

Working Paper No. 145

This publication was made possible through support provided by the U.S. Agency for International Development, under Cooperative Agreement No. DHR-0015-A-00-0031-00.

The views and analyses in the paper do not necessarily reflect the official position of the IRIS Center or the **U.S.A.I.D.**

Author: Jon Elster, Oslo, Norway

IRIS Summary

Transition, constitution-making and separation in Czechoslovakia

by Jon Elster

This paper considers the constitutional developments in Czechoslovakia and the two successor states, the Czech and Slovak Republics. To understand these processes it is necessary to consider in **some** detail the break-up of the Czech and Slovak Republic, as it was called at the time of its dissolution. The failure to keep the country together was closely related to the failure to agree on a new federal constitution and on the division of power between the federation and the two member **republics**. **When the** latter became independent and set about writing new constitutions, their efforts were in multiple ways influenced and constrained by what had already taken place.

The development of Czechoslovakia after 1989 belongs to two overlapping sets of events. On the one hand, Czechoslovakia, like all the Communist countries in this part of the world, saw an astonishingly rapid downfall of communism and the introduction of a democratic regime. In the this perspective we can compare the dynamics of transition and of constitution-making in **Czechoslovakia** with the same developments in other countries. On the other hand, Czechoslovakia, like all the other federations in ther egion underwent a process of fragmentation and breakup into **smaller, independent units**. **In this perspective** we can compare events in Czechoslovakia with what happened in Yugoslavia and the USSR. It is obvious today that once the process of **de-communization had started in some countries and it became clear** that the Soviet Union would not intervene, Communism was doomed in the whole region. It is more controversial whether the process of federations breaking up was equally inevitable.

The paper first provides a selective survey of the history of Czechoslovakia from 1918 to 1989, organized to make sense of what happened after 1989. It then covers the subsequent events leading up to the "velvet divorce" of January 1993 and the constitutional decisions in the two successor republics. Finally the paper describes **and evaluates six explanations of the breakup** that have been put forward. The only one the author considers to be unimportant is "longstanding hostility between Czechs and Slovaks". He argues that the tensions were no greater than exist in many other countries where the possibility of secession is remote. Among the other explanations is a structural one: A two-member federation is inherently unstable; if the two members are of equal size, there is a potential for endless deadlock and struggle. If one is larger than the other, then

either the larger one dominates and the smaller one will resent it, or there is parity and the larger one will resent it. On the other hand, if there are three members of the federation, there is the possibility of shifting alliances, so that all states will get their way some of the time. Other explanations have to do with the motivations of the leaders of the two republics, Klaus and Meciar. Klaus wanted to proceed with market reforms faster than the Slovaks did, and he did not want the decision-making process slowed down by Slovak obstructionism, nor did the Czechs wish to subsidize Slovakia. Meciar enhanced his position among Slovakian political leaders by making strong demands, which, though perhaps made for purposes of bargaining over the division of the gains from federation, led to the inevitability of breakup once the Czechs decided in favor of it.

TRANSITION, CONSTITUTION-MAKING AND SEPARATION IN CZECHOSLOVAKIA*

An IRIS Report

by

Jon Elster

* In addition to the written materials cited below this report is based on interviews with Vaclav **Benda**, Jiri Boguszak, Martin Butora, Zora Butorova, Jan Camogursky, Vojtech Cepl, Pavol Demes, Ludomir **Fogas**, Zdenek Jicinsky, Peter Kresak, Petr **Pithart**, Pavel Rydchetsky, Frantisek Samalik, Jan Sokol, Milan Sutovec, Jan Urban, Ernest Valko, Peter **Zajac**, and Vaclav Zak. Most of the interviews took place in June 1993 and September 1994. I am grateful to all who took the time to meet with me. Above all I am indebted to **Jirina Siklova** for allowing me into her circle of friends so that I could meet some of the others. I should also state what I owe to David Franklin, who played a crucial role in establishing my first contacts in Czechoslovakia in January 1991. In addition to the generous support of the IRIS project I would like to acknowledge the help of the Center for the Study of Constitution-Making in Eastern Europe of the University of Chicago Law School. In particular, I have learned immensely from numerous talks with Stephen Holmes and Wiktor Osiatynski.

Introduction

In an earlier IRIS Report, I analyzed the process of **constitution-making in Eastern Europe after 1989.**¹ The report had three main parts: a discussion of the general issue of constitution-making, an overview of developments in Eastern Europe, and a case study of constitutional developments in Poland. In the present Report I offer another case study, focused on constitution-making in Czechoslovakia and **in the two successor republics. To understand these processes it is also** necessary to consider in some detail the break-up of the Czech and Slovak Republic, as it was called at the time of its dissolution.² The failure to keep the country together was closely related to the failure to reach agreement on a new federal constitution and on the division of power between the federation and the two member republics. When the latter became independent and set about writing new constitutions, their efforts were in multiple ways influenced and constrained by what had already taken place.

The development of Czechoslovakia after 1989 belongs to two overlapping sets of events. On the one hand, Czechoslovakia, like all the Communist countries in this part of the world, saw the astonishingly rapid downfall of communism and the introduction of a democratic regime. In this perspective we can compare the dynamics of transition and of constitution-making in Czechoslovakia with the same developments in other countries. On the other hand, Czechoslovakia, like all the other

¹ Published as "Constitution-making in Eastern Europe: Rebuilding the boat in the open sea", Public Administration 71 (1993), 169-217. The report has also been translated into Polish: Tworzenie Konstytucji w Europie Środkowej, Warsaw: The Helsinki Foundation 1994.

² To avoid burdening the text with this long name, however, I shall use "Czechoslovakia" to refer to the country before the breakup.

federations in the region underwent a process of fragmentation and breakup into smaller, independent units. In this perspective we can compare events in Czechoslovakia with what happened in Yugoslavia and the USSR. It is obvious today that once the process of de-communization had started in some countries and it became clear that the Soviet Union would not intervene, Communism was doomed in the whole region. It is more controversial whether the process of the federations breaking up was equally inevitable. I discuss that question below for the case of Czechoslovakia, without providing a clear-cut answer.

I now proceed as follows. In Section II I provide a selective survey of the history of Czechoslovakia from 1918 to 1989, organized to make sense of what happened after 1989. In Section **III** I cover events between the events of November 17 1989 that triggered the **downfall** of the regime to the first free elections in June 1990. In Section **IV** I consider the dual efforts to write a new constitution and to keep the country together during the two years for which the first parliament was elected. In Section **V** I discuss how the elections of June 1992 created a political situation in which the breakup of the country, from possible and plausible, became probable and inevitable. In Section **VI** I briefly explain some aspects of the constitution-making in the two new republics. In the final Section **VII**, I adopt a more systematic perspective. I survey a number of explanations that have been offered for the breakup of the country, and **comment** briefly on their validity.

It is important to state my limitations. I do not know the language.³ If only for that reason, I can make no claim to scholarly knowledge of the country and its history. In fact, my knowledge is thin even given what is accessible in languages that I do read. The chronological narrative offered below is based on a small number of written **sources**⁴, supplemented by what I learned in interviews with Czech and Slovak politicians and scholars.⁵ I do hope that I got the basic facts right, though. **The more analytical parts of the report, especially the final section, are of course constrained by these limitations.** I do not believe, however, that a fine-grained knowledge is indispensable for sketching and tentatively assessing some explanatory hypotheses. Also, I hope that my knowledge of similar processes in other countries in the region - and in fact of

³ Or languages: although Czechs and Slovaks understand each other without difficulty, the two languages are different enough to create a potential for conflict. notably in the organization of the state-owned media

⁴ I rely heavily on the articles in the weekly survey published by Radio Free Europe from 1989 to the present. Up to the end of 1991 this publication was called "Report on Eastern Europe", from 1992 onwards "'RFE/RL Research Report". In the text I refer simply to "RFE" followed by the date. I should also acknowledge my debt to a valuable book by Carol Skalnik Leff, National Conflict in Czechoslovakia, Princeton University Press 1988. Excellent surveys of constitutional developments from 1920 to 1993 are found in Zdenek Jicinsky and Vladimir Mikule, Das Ende der Tschechoslovakei 1992 in verfassungsrechtlicher Sicht, Parts I and II, Köln: Bundesinstitut für ostwissenschaftliche und internationale Studien 1994.

⁵ **Because** of the superficial character of my **knowledge**, it is likely that much (perhaps most, conceivably everything) of what I learned in the interviews is in fact already, unbeknownst to me, in the public domain.

constitution-making at other times and places⁶ - can to some extent compensate for my lack of familiarity with Czechoslovakia.

II. 1918-1989

The Czechoslovakia that emerged after the end of World War I was an artificial creation, not - as in the case of Poland - the reestablishment of a unitary nation that had been divided by the large powers. Although both Slovakia and the Czech lands (Bohemia and Moravia) were parts of the Austro-Hungarian empire and had similar languages, they had very different historical trajectories. Whereas the Czech lands belonged to the Austrian part of the empire, Slovakia had for a thousand years been under Hungarian domination. The civil codes were different, Slovakia applying for instance the principle of equal inheritance while the Czech lands had primogeniture. (After 1989, this difference turned out to be important for the attitude towards restitution of confiscated or nationalized property.) In 1918, the Czech lands were much more advanced economically. About two thirds of the population were engaged in the secondary and tertiary sectors whereas in Slovakia two thirds were employed in the primary sector. Also, religion had a much stronger place in Slovakia. Altogether, Slovakia was a traditional society, based on the respect for hierarchy and authority, a country that unlike the Czech lands had not yet undergone the traumas of modernization. The two parts of the country also differed in quantitative terms. Of the 13.4 million

⁶ I have studied the constitution-making process at the Federal Convention in Philadelphia (1787) and the first French Assemblée Constituante (1789-91) in my “Argumenter et négocier dans deux assemblées constituantes”, Revue Française de Science Politique 44 (1994), 187-256.

inhabitants found in the 1921 census, about 3.5 million lived in Slovakia, including an Hungarian minority of 700, 000. There was also a large German minority (about 3.2 million), largely concentrated in the Czech lands. In 1989, by contrast, the Czech lands had a population of about ten million and few minority members, all Germans having been deported after 1945. Slovakia contained about 5 million, including an Hungarian minority of about 600, 000.

Under the constitution of 1920, the country was organized as a unitary state without any federal elements. The (predominantly Czech) political leaders believed that only by “assimilating the Slovaks under a common umbrella of ‘Czechoslovakism’ could they be safeguarded from Hungarian clutches”⁷; at the same time, they feared that recognition of Slovak autonomy could set a precedent for similar demands by the German minority. Parliament, elected by the proportional method, was bicameral. President Thomas Masaryk, although elected by the parliament, had exceptionally large de facto powers, due to his prestige as founder of the new state. All three elements - proportionality, bicameralism, indirect election of the president - were incorporated in the new Czech constitution of 1992, often with explicit reference to the First Republic, (See below, though, for the current imbroglio over the Czech Senate.)

The history of the Republic from its creation to 1989 is punctuated by four dates: 1938, 1945, 1968, and 1989. Until 1938, Czechoslovakia was a prosperous, democratic country. In terms of industrial production, for instance, it was the fourth largest power in Europe, led only by Germany, Britain and France. Also, it was the only country in -what later became the Communist bloc that had a real history

⁷ Leff, National Conflicts, p. 136.

(and memory!) of democratic self-government. After Munich, the Czech lands became a German protectorate (and de facto part of the German **Reich**), whereas Slovakia in 1939 was organized as a formally independent state. Although in reality war-time Slovakia was little more than a Nazi puppet, the period still retains symbolic significance for many Slovaks as a first exercise in state-building. When Czechs express their contempt of current Slovak celebrations of their wartime regime, they sometimes fail to **see that what is celebrated is the independence of the regime, not its ideology.**

The Second Republic was founded in 1945. Because the first parliament was elected (in 1946) mainly to give a new constitution to the country, the deputies' term of office was restricted to two years. The constitution was adopted in May 1948, three months after the Communists had taken power. The details have little interest today, except with regard to the system of "asymmetric federalism" that was adopted. In addition to the federal parliament and government, Slovakia would have its own parliament (National Council) and government; no such arrangement existed in the Czech lands.* A similar asymmetry existed within the Communist party. There was a Slovak Communist party, a Czechoslovak Communist Party - but no Czech Communist Party. Although intended as a concession to Slovak nationalism, the **creation of these asymmetrical** structures turned out to have the same consequence as many other political

⁸ Later, I argue that a federation with two member states is an anomaly; even more so, a federation with only one member!

concessions, whetting the appetite for independence rather than satisfying it.⁹

The first consequences appeared in 1968, with the Prague Spring. It is often said that the Slovaks, in this period, put “federation before democracy”. Although that claim remains controversial, it seems true that “the impetus for federalization was almost exclusively Slovak”.¹⁰ In the new constitution that took force on January 1 1969, the federal **structure of the republic** was asserted in two ways. On the one hand, the asymmetry was eliminated by the creation of a Czech National Council. On the other hand, and more crucially, the federal assembly was made bicameral, with an upper house divided into two-equal size Czech and Slovak sections. Ordinary legislation needed a simple majority in the lower house and in each section of the upper house; constitutional changes needed three fifth majorities throughout. This implied that one fifth of deputies to the upper house could (if concentrated in one section) block all constitutional changes. Although elaborated **before the Soviet** invasion in **August 1968**, the new constitution was passed after the invasion and with Soviet approval. In this connection two claims have been made. First, in the absence of the invasion the creation of a federal structure would have led, sooner rather than later, to Slovak secession. Second, the temporal coincidence of the **invasion and the adoption of the new constitution was widely interpreted as** a sign of Soviet imposition of the constitution. In this perspective, the Soviets approved the constitution only because they saw it as a useful tool for a policy of divide-and-conquer. In the eyes of the Czech population,

⁹ Leff, National Conflict, p.98 ff; Tocqueville, The Old Regime and the Revolution, New York: Doubleday 1955, p. 176-77.

¹⁰ Leff, National Conflict, p.124.

this aspect of the origin of the 1968 constitution severely reduced its legitimacy.

Within the strict Communist framework imposed by the Soviets, the constitution was, of course, a mere sham. Neither the principle of the sovereignty of parliament nor that of a separation of powers has any reality when the Party has all real authority. The federal structure was also a mere caricature, as shown by the fact that the Czech and Slovak National **Councils regularly passed identically worded legislation.¹¹** In any case, most of the concessions to federalism were taken away by a new constitutional reform in 1970. Yet the federal framework mattered profoundly - after 1989, when it was used to promote, and sometimes to block, new legislation. The 1968 Czechoslovak constitution may be a unique example of a text that came into life only after death - after the abolition of the regime whose affairs it was supposed to regulate. I shall return to this question shortly.

After the Soviet repression, the reformers within the Communist party - predominantly Czech - were dismissed. Among the people who took their place were a disproportionate number of Slovaks, including the new Party Secretary Gustav Husak. Thus in addition to the largely symbolic victory of federalism, the Slovaks gained participation in power. As **part** of the **“reward” for** their comparative loyalty in 1968 was the construction of huge industrial plants in Slovakia, they also gained some economic advantage, at least in the short run.

¹¹ It is significant in this connection that ‘because of what was perceived as the “right-wing opportunism” of the Czechs the USSR vetoed the establishment of a Czech Communist Party.

November 1989-June 1990

The proximate cause of the downfall of Communism in **Czechoslovakia was the brutal repression of student demonstrators on November 17 1989**, followed by a wave of mass protests that ultimately also reached the factories. The more remote cause was the series of regime transformations in Poland, Hungary and East Germany that, besides serving as a model and an inspiration, had the crucial effect of signaling **that the Soviet Union was not going to intervene. The actual transition was** effectuated through the vehicle of the Round Table Talks between the regime and the opposition.¹² Actually, there was not one Round Table, but two. More or less simultaneously with the discussions between the regime and Civic Forum in Prague, regime officials and members of Public Against Violence (the Slovak counterpart of Civic Forum) were meeting in Bratislava. The outcome of both discussions was the formation of coalition governments. The Slovak Communists managed, however, to maintain a stronger position in Slovakia than their counterparts in Prague. Negotiators from the opposition now reproach themselves for having been too timid in pushing for change and for having chosen compromise rather than confrontation. Also, the Bratislava leadership, unlike the Central Committee in Prague, was not personally compromised during the **November** demonstrations. The Slovak Communist Party got rid of the worst people, and was able to maintain not only its organizational structure but also its property (the Slovak ex-Communists are today the richest party in Slovakia). Later, the Slovak Communists in the Federal Parliament

¹² See the essays in J. Elster (ed.), The Round Table Talks in Eastern Europe, forthcoming from the University of Chicago Press. In this volume, M.Calda deals in detail with the Round Table Talks in Czechoslovakia.

played a consistently obstructive role, as “constitution-wreckers” and “federation-wreckers”.

The Central Committee leaders in Prague were more completely and more rapidly demoralized. As in Poland and Hungary, not only the party leaders but the opposition as well were surprised by the sudden collapse of the regime. The only obstacles to radical and swift reform came from Civic Forum itself. Havel and his associates deliberately **pulled their punches - asked for less than they could get - in three crucial** respects: in their insistence on the principle of legal continuity, in their respect for Slovak sovereignty, and in their choice of electoral system. I shall address these issues in turn.

The first problem the reformers faced was how to implement their reforms. The decision was made at the Round Table to work with the existing parliament, purified of its most obnoxious members. Between one third and one half of the deputies either resigned or were forced to step down, and replaced by members of Civic Forum and of the satellite parties of the Communist party, which had carried out an internal house-cleaning in the days following November 17. Some Communist deputies were also replaced by other Communists. The replacement was carried out within strictly legal forms, using as a precedent the procedure by **which the** reformers had been forced out of parliament **after the 1968 invasion.**¹³ This is one application of the principle of legal continuity.

A more important application arose out of the fact, explained earlier, that the reformers found themselves saddled with a constitutional

¹³ One notorious Communist even used this fact to object to the replacement (Zdenek Jicinsky, Ceskoslovenskv Parlament v Polistouadovem Vvvoji. Prague: AFGH 1993, p.62).

framework that gave extreme veto powers to the Slovak minority in parliament. A Slovak group of 31 members, of the upper house - **representing one fifth of that house and two fifteenths of the population in the country as a whole**¹⁴ - could block any constitutional change. This perverse situation was the outcome of a triply favorable treatment of the Slovaks. First, they had equal numbers of representatives in the upper with the numerically larger Czechs. Second, a majority was required in each of **the two sections of that house, not in the house voting as one. Third,** constitutional changes required a qualified majority. Combining the first and the second or the first and the third of these principles would have been well within the range of normal constitutional procedures. The combination of all three principles, however, gave excessive power to the Slovaks. ¹⁵

In this situation, Civic Forum might have been justified in rapidly pushing through a constitutional bill to change the mode of voting in parliament. They could have appealed both to substance and process: to the exorbitant nature of the Slovak veto and to the illegitimacy of the 1968 constitution. Although some Czech politicians made moves in this

¹⁴The upper house had 75 Czech and 75 Slovak members. Assume that the voters formed some proportion of the populations of the two republics, respectively 10 and 5 millions. Behind each Slovak deputy to the upper house there was, therefore, 5 million/75 voters. A group of thirty deputies represented, therefore, thirty times this number or 2million, i.e. two fifteenths of the total number of voters. In itself, this proportion is not remarkable. For instance, a tiny proportion of the American electorate (the voters in the thirteen least populous states) could in theory block any constitutional change. The voters in the small states do not, however, have any common interests (apart from their interest in maintaining their disproportionate power) that would make such a constellation likely.

¹⁵That would also have been the effect of combining the second and the third principles.

direction’“, they were met with strong Slovak opposition. As an overriding goal of the leaders of the Civic Forum was to avoid any actions that might cause or perpetuate social division, no further steps were taken.

The problem might perhaps have been defused at an earlier stage. In the first time after November 17, Civic Forum was quite active in Slovakia. In the Civic Forum headquarters in Laterna **Magica** (Prague) there was a map of Czechoslovakia with the geographical distribution of ~~the~~ Civic Forum committee, showing that Civic Forum was active also in Slovakia, except for Bratislava, which was dominated by Public Against Violence. Many parts of Slovakia outside Bratislava felt greater affinity with the Czechs, and did not want to be ruled from Bratislava. However, Civic Forum deliberately dismantled its organization in Slovakia, recommending its Slovak members to join Public Against Violence. “In this way the chance...for unified political management of the reform process in the entire country disappeared.”¹⁷

Consider next the decision to adopt a system of proportional representation in the first elections. In December 1989 and January 1990 the issue of proportional versus majoritarian (majority or plurality voting in single-member districts) systems was much debated among Havel and his political associates. It is clear that Havel was, at that time, animated by two distinct desires. On the one hand, he did not want to exploit the dominant position of Civic Forum so that the movement would gather all seats in parliament. It was clear, however that with majority voting Civic Forum would have swept the elections, as Solidarity had done for the elections to the Polish Senate in June 1989 when they got all deputies but one. By

¹⁶ Vaclav Zac, “The velvet breakup” (unpublished manuscript 1994).

¹⁷ Zac, “The velvet breakup”.

contrast, proportional elections would allow for the representation of other political tendencies too, including the Communists? On the other hand, **Havel was at that time notoriously opposed to the party system**¹⁹. He wanted an electoral method that would allow for the selection of independent candidates. The method which does that par excellence is, of course, the majority system. There may simply not be any system that can accomplish both of Havel's desires. Although the voters, in the PR system **that was eventually adopted, were allowed to modify the order in which** the candidates were listed on the ballot, they nevertheless had to choose from the party list.

The remarkable fact is that in the end the decision to adopt proportional voting was taken by the very group - Civic Forum - which had everything to gain from adopting majority voting and which moreover, had the power to impose that system. One of Havel's close associates remarks that "this decision will be seen either as the glory or the

¹⁸As in Poland - but unlike Hungary (and there they were proven wrong) - the Communists in Czechoslovakia preferred proportional representation. Puzzlingly, however, part of the opposition to the majority system was due to fears that it would favor the Communists. They were the only well-organized political movement in the country, and some thought that for this reason they might be able to exploit the majority system. I can see no valid reason behind this fear, which was probably due mainly to lack of **understanding** of the properties of the various electoral systems.

¹⁹Later, with more experience of the political system, he changed his mind. Perhaps one could say that nobody had played the Blum to his de Gaulle, another notorious adversary of the party system. In November 1942 and then again in March 1943, Leon Blum (in prison) wrote to de Gaulle (in London) to warn him against the idea that the resistance movement could substitute for a regular party system. After the liberation, the parties would have to assume their normal place in any democracy. (Jean Lacouture, Léon Blum, Paris: Seuil 1977, p.486 ff.) De Gaulle got the message (Jean Lacouture, De Gaulle, vol.I, Paris: Seuil 1990, p.705).

weakness of the November revolution: we were winners that accepted a degree of self-limitation". From the positive (as distinct from normative) point of view, **the episode** offers an important counterexample to the proposition that parties invariably favor the electoral systems that favor them. ²⁰

The decision to adopt proportional voting was taken in a way that had a curious and possibly momentous side effect. When the electoral system was discussed in a meeting between Havel and some of his associates, it became clear that they were close to persuading him to adopt proportional representation. To clinch the matter, one of them added that the decision was not a definitive one: they could always change the system later. It was in that experimental spirit that the idea of having the first parliament elected for two years rather than four first came up. That was an idea that Havel appreciated on other grounds too. He had been reluctant to serve as president for four years, and this proposal would allow him to serve for two years only. Many believe today that it was a mistake to think that the new federal constitution could be written in two years. One centrally placed politician also said so at the time: a constitution can be written in three months or in ten years, but not in two years. Although he did not advocate the idea of pushing through the constitution immediately, while a **window** of opportunity still existed, he did oppose the two-year

²⁰For two Polish counterexamples, see my "Constitution-making in Eastern Europe", p.207-8. Next time around, however, Havel was somewhat less non-partisan. In his electoral bill for the 1992 elections, he proposed to divide the country into small electoral districts in which voters would cast their ballots for individual candidates rather than for a **party ticket**. The **proposal** was turned down by the Federal Assembly, partly because of a suspicion that it "was designed to ensure the reelection of the leading figures of the 'velvet revolution' " (RFE 14.2.1992).

parliament. Although there were other centrally placed actors who shared his opinion, the two-year option won out. The argument Havel made in public as distinct from what initially may have swayed him - was that a parliament elected in 1990 would mainly reflect the rejection of the old regime and not allow the expression of pluralism.

In summary and in retrospect, there were three features of the “velvet revolution” that cast their shadow into the first democratically elected legislature and that may be held responsible for the failure to adopt a new constitution and to keep the country together. First, there was an insufficiently thorough elimination of the Communists. This came about partly by accident (in Slovakia), partly by a deliberate decision to adopt an electoral system that would allow for a Communist presence in the new parliament. Second, there was a lack of understanding of the fetters that the 1968 constitution would impose on the reform process, and/or a lack of willingness to remove them. Third, the decision to elect the first, constitution-making assembly for two years was unfortunate, partly because valuable time would be taken up by campaigning before the next elections, and partly because the compression of the time horizon carried a risk of political overheating.

IV. June 1990-June 1992

The elections of June 1990 created a federal parliament dominated by Civic Forum and Public Against Violence: 170 seats out of 300, with the Communists and the Christian Democratic Union achieving respectively 47 and 40 seats and three small parties 12-16 seats each. However, Public Against Violence did not get a majority (and a fortiori not

a three fifths majority) of the seats in the Slovak section of the upper house.

The political process during the first parliamentary period was dominated by two tasks. On the one hand, there was a massive and largely successful effort to create the legal and institutional framework for a market economy, and to transfer state property to individual owners. On the other hand, there was a protracted struggle to define the division of powers between the federation and the two constituent republics. Although the original idea had been to resolve this issue as part of the general process of establishing a new constitution, it soon became clear that the Slovaks wanted an immediate solution (RFE 7.12.1990). Tripartite talks between the federal government and the governments of the two republics took place from August to December 1990, culminating on December 12 with the adoption by the Federal Assembly of a constitutional amendment on power-sharing (RFE 21.12.1990). The amendment went quite far in meeting Slovak demands, including a somewhat absurd provision that the governorship of the Central Bank would alternate annually between a Czech and a Slovak.²¹ Yet it soon became clear that it did not go far enough.

Before discussing these later developments, we should note that the tactics adopted in the amendment struggle probably had an impact on what happened later.' Two events were crucial. First, in a meeting on December 6 1990 with the Czech leaders, Vladimir Meciar and other

²¹ It is a commonplace in the economic theory of Central Banks (i) that to carry out their task properly they need to be independent of the government and (ii) that a long tenure for the Governor is a necessary condition for independence. See Alex Cukierman, Central Bank Stratew. Credibility, and Independence, Cambridge, Mass.: MIT Press 1992.

Slovak leaders declared that if the Czech proposals for changing the amendment were adopted, the Slovak National Council would declare the supremacy of Slovak law over federal legislation. Second, perhaps more fatefully, the Czech Prime Minister Petr Pithart decided - “pointlessly”, according to one observer-participant²² - to reveal this threat in a speech to the Czech National Council, adding that the Czech government was preparing emergence measures for the case that the unity of the country became endangered. From the Slovak point of view, this speech could be interpreted (or at least presented) as evidence that the Czechs wanted to split the federation. From the Czech point of view, Pithart’s revelation - and the subsequent failure to get the Czech proposals adopted - showed Meciar to be a successful blackmailer. The position of Pithart, who had already been criticized as too friendly to the Slovaks, was undermined.

To understand the escalating conflicts over the nature of the federation, it is important to know the options that were being debated, e.g. by considering the alternatives presented in the opinion polls. In June 1990, the alternatives were:

- Common state, with large powers vested in central government;
- Common state with large powers vested in Czech and Slovak governments;
- Confederation;
- Two completely independent states.

²² Zak, “The velvet breakup”. (Zak was Vice President of the Czech National Council at the time.)

In the summer of 1992, the alternatives were:

- Unitary state, with one government and one parliament for all of Czechoslovakia;
- Federation composed of the Czech Republic and Slovakia;
- Federation composed of more than two republics;
- Confederation;
- Separation (two completely independent states).

In the concluding Section I indicate the proportions of respondents favoring **the various alternatives**; **There**, I also explain the meaning of the option “Federation composed of more than two republics”. For the present purposes, the main point is to observe a gradual shift in the alternatives that were held up against each other. Initially, the debate concerned the division of powers between the federal and the national governments. Next, the main opposition was between a federation (as defined for instance by the December 12 amendment) and a more loosely structured confederation. Finally, the idea of confederation was progressively diluted so that in the end it became almost indistinguishable from the creation of two independent states.

I shall not attempt to give a blow-by-blow account of this process, but only sketch the main mechanisms that propelled it forward. Some of these were rooted in Czech-Slovak relations. There was a strong element of Slovak brinkmanship, embodied in Vladimir Meciar. After Pithart had made Meciar’s threat public, he was locked into an aggressive position from which he could not back down. Also, in the perceptions of many Czechs there was little difference between Slovak nationalism and

Slovak separatism, a suspicion that easily became self-fulfilling. Other mechanisms were linked to intra-Slovak relations, as Meciar for electoral purposes had to demarcate himself from his Slovak rivals. The separatist position was already occupied, by the Slovak National Party. The federative position was occupied by Jan Carnogursky and his Christian Democratic Party, although with the curious twist that in their program the federation was supposed to last only ten years, until the time when the Czech and Slovak Republics could enter the European Union as two separate entities.²³ The only position left to Meciar was the confederative one. He found that a strategy with great appeal was to pay lip service to the idea of keeping the country together while at the same time demanding Slovak independence in more and more domains. Thus before the elections of June 1992 he proposed the adoption of a Slovak constitution before the federal one, the election of a Slovak president, the creation of a Slovak Central Bank, and even an independent foreign service.

At the constitutional level, the most notable achievement was the adoption in 1991 of a federal bill of rights. There was a conspicuous

²³ Meciar's demand for a confederation within which each republic would have virtually all the attributes of an independent state was one of the absurd ideas launched in this period. Another was Camogursky's idea of the "federation for ten years". In my interviews with Slovak politicians who advocated this proposal, I regularly asked the following question. "Suppose that in a marriage, one spouse announces to the other that he or she will seek a divorce in ten years. Don't you think that marriage would collapse immediately? And wouldn't the same psychological mechanism of anticipating and immediately consuming the announced divorce hold for the proposal of a federation that is to end in ten years?" I never got an answer that I could understand. A third convoluted idea that originated in Slovakia was the proposal of a "state treaty" between the two republics (RFE 7.6.1991), a procedure that might have required the momentary dissolution of the federation shortly followed by its reemergence on the basis of an agreement between the two states.

failure, however, to adopt a new federal constitution. Part of the reason of the failure was the cumbersome procedure that was adopted. The work on the constitution took place in a parliamentary **committee** and in an advisory expert committee. The parliamentarians were to draft the main directions, and then, if they agreed - a big if - the experts would translate the proposals into legal language. When the text came back, the deputies often said, "This is not what we wanted".²⁴ Much more important, however, was substantive disagreement and deadlock. Obviously, the nature of the federation or confederation was the main stumbling block. There was also failure to reach agreement on the relations between government, parliament and the president. A "little constitution" regulating these relations was submitted to the Federal Assembly in the spring of 1992, but failed by two Slovak votes in the upper house.

The role of President Havel in the constitution-making process was complex, and possibly counterproductive. Many close observers explained his behavior in terms of his background as a playwright. According to one, Havel lived in "dramatic time", not understanding that parliamentary politics takes place in "epic time". He wanted long periods to be condensed into short, dramatic moments. According to another, Havel saw himself as an actor, acting in a play written by himself. He had no feeling of being subject to constraints. By the time he understood how normal politics worked, valuable time had been lost. The same observers emphasized that Havel's overall contribution to the Czechoslovak transition

²⁴An instructive contrast is with the drafting of the 1978 Spanish constitution, where legal experts were deliberately excluded so as to avoid excessive precision in the final formulations. See J.P. Pérez-Llorca, "Commentary", in R.A. Goldwin and A. Kaufman (eds.), Constitution Makers on Constitution Making, Washington D.C.: American Enterprise Institute 1988, pp.26675, at p.272.

was immensely positive, and that, moreover, his positive achievements stemmed from the same character traits that in other situations made him an obstacle to conflict resolution. Sometimes, disregard for consequences has good consequences; sometimes, not.

When organizing a number of top-level meetings about constitutional reform, Havel initially invited only the presidents and vice-presidents of the three parliaments, neglecting the party leaders. When he **finally came to understand that the parties would have to play a crucial** role, valuable time had, once again, been lost. His relations with Alexander Dubcek, president of the Federal Assembly, were not good. Dubcek may have been somewhat envious, feeling that he was being reduced to a sideshow; or perhaps he simply was not up to the task.

Havel's **direct constitutional initiatives invariably failed**, largely because of bad tactical judgment. He repeatedly asked parliament to increase the powers of the presidency. His constitutional draft of March 5 1991, for instance, gave the president the right to declare a state of emergency, to dissolve parliament, and to call referendums. Apparently, he did not understand that such proposals, coming from the very office whose powers were to be enhanced, were likely to meet with suspicion.²⁵ He repeated the same proposals in a televised speech on November 17 1991. Between these two proposals for constitutionalizing the presidential right to call referendums, Havel had also tried to push a bill on referendum on **separation** through the federal assembly. A petition was organized that gathered almost 2.5 million signatures, and there were big demonstrations

²⁵For a discussion of such "reactive devaluation" see Lee Toss, "Reactive devaluation and other barriers to dispute resolution", forthcoming from W.W. Norton in K. Arrow et al. (eds.), Barriers to the Negotiated Resolution of Conflicts.

in Prague to put pressure on parliament. Whether or not the latter were called by Havel - a point on which observers disagree - they probably had the effect of strengthening resistance in parliament to the bill. It failed when most Slovak and virtually all communist deputies voted against it.

V. The break-up

During the two years of the first democratic parliament, it became clear that the mood of the country was changing. In the Czech lands, right wing market reformers were emerging as the strongest force. In Slovakia, left wing forces - if that phrase can be used as an umbrella term for the separatist, populist and communist parties - became increasingly strong. The liberal center that had been at the core of the 1989 revolution was losing force. To some extent, these changes were already reflected in the composition of parliament. On February 23 1991, Civic Forum split into two groups, the conservative Civic Democratic Party (headed by Vaclav Klaus) and the liberal Civic Movement. Several smaller groups also left Civic Forum to set up their own parties. The disintegration of Public Against Violence began on March 5 1991, when Meciar founded his own political party, later named Movement for a Democratic Slovakia.

The extent of the swing, as revealed in the elections of June 5-6 1992, nevertheless came as a surprise to most observers. Basically, the liberal-centrist postcommunist elite was wiped out. As that elite was the only political force with a strong commitment to a genuine federation, centrifugal forces now came to dominate the scene. Their motivation and interaction are further described in Section VII below. Here, I shall only give a brief chronological story of events.

In the drama culminating in the creation of two independent states on January 1 1993 the two main actors were Klaus and Meciar, undisputed winners of the elections, with Havel in an ambiguous supporting role. An early sign of what was to come occurred when Havel offered Klaus the position as federal Prime Minister and Klaus preferred to accept the premiership of the Czech Republic. On July 3, the day after the three governments were formed, the newly elected federal assembly voted not to reelect Havel as president of the country. (Essentially he was defeated by the Slovak section in the upper house.) On July 17, the Slovak National Council overwhelmingly approved the Slovak Republic's declaration of sovereignty. Minutes later, Havel resigned from the presidency, effective July 20. In retrospect, this was simply an act of dotting the i's and crossing the t's: the federation was dead, and Havel wanted to have nothing more to do with it. On July 22 and 23 Klaus and Meciar agreed on ending the federation. Although Meciar later (in August) appeared to have second thoughts, the Czechs remained firm.

What remained to determine were the procedural ways of attaining this end and the "divorce settlement" - the division of the common assets. Under the existing constitution, secession of one republic demanded a referendum among the citizens of that republic. Neither Meciar nor Klaus wanted to follow this course. Instead, they asked the Federal Assembly to adopt a constitutional law that, in addition to referendum, would provide other and safer means to secession. When the bill failed by a small margin, a surprise motion to create a Czech-Slovak Union was tabled and accepted. The proposal - which received the support of the vast support of the deputies from Meciar's Movement for a Democratic Slovakia - was

probably made only to undermine the bargaining position of Klaus in the upcoming division of the common assets. (RFE 16.10.1992)

Klaus, in fact, wanted the split to happen as soon as possible. He was afraid that Western investors, whose interest in the Czech economy had already started to wane as a result of the uncertainty over the future of the federation, might flee the country. Although he could have declared a unilateral secession, he wanted the split to happen in a constitutionally acceptable manner, both to appear as “clean” in the eyes of the West and to prevent Slovakia from blaming him for the breakup. Meciar, on his side, was in no hurry. As long as the federation lasted, Slovakia could retain its share of the federal budget and postpone the economic losses that separation would entail. In this perspective, the proposal of a Czech-Slovak Union was simply a procrastinating move, intended to induce Klaus to make a favorable offer on the division of the assets in exchange for Slovak acceptance of a rapid dissolution.

On November 25 1992 the Federal Assembly adopted a bill to dissolve the federation, in spite of claims by the opposition that the country could be split only on the basis of a referendum.²⁶ In the weeks preceding this vote, Klaus and Meciar had prepared a number of agreements on the division of the common assets and the future relations between the two states. It was clear to everybody that the break-up was imminent, and would happen in a ‘reasonably orderly way regardless of what the Federal Assembly decided. It was also clear that at this stage a referendum could

²⁶ “Ironically, most of the parties advocating a referendum, in particular the Czech and Slovak Communists and the Slovak Christian Democrats, had blocked the holding of a referendum in November 1991, when, as Havel remarked, ‘the referendum still made sense’.” (RFE 19.11.1992)

not serve any purpose. Hence a sufficient number of opposition deputies decided to forego their opposition to the bill the third time it was submitted **to the assembly.**

VI. The Czech and Slovak constitutions

During the period of the first democratic parliament, there had been commissions at work drafting constitutions for the Czech and the **Slovak republic, in parallel with the drafting of the federal constitution.** The work of the Czech commission remained at the stage of an unpublished draft, and was never submitted to parliament.²⁷ It had no influence on the constitution that was adopted on December 16 1992. By contrast, the Slovak constitution that was adopted on September 1 1992 was the last document in a series of evolving texts, the first of which dates from 1990. This continuity led, among other things, the Slovaks to retain the Federal bill of rights in their constitution. The Czech constitution refers to the bill, for reasons indicated below, but does not give it full constitutional force.

The constitution adopted on December 16 1992 “owed much **to [the earlier] proposals; but even more of the constitution’s provisions** were based on the winning party’s own conceptions” (RFE 30.10.1992). Reading the constitution, it seems to owe even more to the need to put something together in a hurry. It is a clumsily formulated document. with a number of ambiguities and technical flaws.²⁸ The most unusual (and unusually vague) provision is Art. 106, which allows parliament to recall the President with a 3/5 majority (the same needed to elect him) for

²⁷ Jicinsky and Mikule, Das Ende der Tschechoslovakei, Part I, p.25.

²⁸ See Jicinsky and Mikule, Das Ende der Tschechoslovakei, Part II for a detailed discussion; also Pavel Mates, “The new Slovak constitution”, RFE 30.10.1992.

“conduct aimed to destroy the democratic and constitutional regime”. In March 1994, pro-Meciar deputies wanted to use the provision to remove President Kovac from office for no other reason than his criticism of Meciar (RFE 1.4.1994). Parliament is thus placed in the strange role of having power to elect and remove both executives, the prime minister and the president. Although vulnerable to parliament, the president can dismiss the prime minister on his own initiative, not only when the government fails to retain the confidence of parliament.

Not knowing much of what went on behind the scenes, I am not able to trace specific provisions in the Slovak constitution back to the ideas or interests of its creators. It is possible to say a bit more about the making of the Czech constitution. It was clearly a result of compromise. The constitution needed 121 votes to be passed. The Klaus coalition had 105 members. An additional 12 votes from the Moravian party were obtained by means of vague promises to do something for Moravia. Votes of former communists and social democrats were obtained by including a reference to the bill of rights, which has a strong emphasis on social and economic rights.

At the level of overt argument, references to the constitution of the First Republic were used both to justify specific provisions (1/3 quorum, 3/5 majority for constitutional amendments) and to exclude others (the constructive vote of no confidence). In reality, the decisive reasons were often elsewhere. Klaus wanted a simple majority for amending the constitution, understandably enough as his party had more than a half but less than three fifths of the deputies. When formulating this demand he had no hope that it would be accepted, yet it gave him something to give up in

exchange for concessions on other issues.²⁹ The actual reason why parliament did not accept the constructive vote of confidence certainly had **something** to do with the fact this mechanism leads to a weakening of parliament vis-a-vis government.

The main philosophical inspiration behind the constitution was Hayekian. One of its main architects, Vojtech Cepl, is a great admirer of Friedrich Hayek's constitutional views and tried with some success to incorporate them into the text. For instance, the requirement that the members of the Senate be at least 40 years old is an echo of Hayek's "model constitution" (although the Czech constitution does not follow Hayek in also imposing an upper age limit on senators)? The very existence of the Senate, however, has a different background. Again, at the level of overt argument we find references to the bicameral assembly of the First Republic. The reality, as we shall now see, is much more mundane.

In general, unicameral constituent assemblies tend to create unicameral constitutions, bicameral assemblies to create bicameral constitutions.³¹ The unicameral Czech assembly created a bicameral constitution, for reasons well stated by Jiri Pehe:

In December 1992 the Czech parliament adopted a constitution providing for the creation of a two-chamber Czech parliament. The upper chamber - the Senate - was to be made up entirely of Czech deputies from the Federal Assembly after the dissolution of the federation. The parliament's decision to create the Senate was widely seen - particularly by the media - as an incentive offered to Federal

²⁹ Jicinsky and Mikule, Das Ende der Tschechoslovakei, Part I, p.26.

³⁰ Friedrich Hayek, Law, Legislation and Liberty, vol.III, London: Routledge 1979, p.113.

³¹ See my "Constitution-making in Eastern Europe", pp. 183, 212.

Assembly deputies to pass a constitutional law abolishing the federation; it was argued that without such an incentive, deputies of the federal parliament, **fearing** the loss of their mandates, would reject the law - a development that could torpedo efforts to dissolve Czechoslovakia peacefully. (RFE 12.11.1993)

If the origin of the Czech Senate was mundane, the continuation of the story is downright sordid. As Pehe goes on to say, “after the abolition of the federation, the Czech **parliament** changed its mind”. According to many observers, he writes, “what had really prompted many deputies to change their minds was the realization that, if not given new political roles in the Senate, most former Federal Assembly deputies - their political rivals - would disappear from the media spotlight, which would then automatically be focused on the deputies of the existing Czech parliament”. At the time of writing (November 1994), the Senate still has not been constituted, nor elections scheduled. The lower house has been carrying out its duties.

Generally speaking, it is rare for constitutions to be designed as a **function of the private** interests of the constitution-makers. Although Charles Beard claimed that the American constitution of 1787 reflected the personal economic interests of the framers, more recent studies have shown that the interests of their constituencies were more important.³² The

³²Charles Beard, An Economic Interpretation of the Constitution of the United States, reprinted with a new Introduction by Forrest McDonald, New York: The Free Press 1986, is the classical statement of the view that the framers were moved by their personal **self-interest**. R.A. McGuire, “Constitution making: A rational choice model of the Federal Convention of 1787”, American Journal of Political Science, 32 (1988), 483-522 finds that the economic interests of the constituencies of the various delegates have more power to

making and implementation of the Czech constitution stands out in this respect, as an example of blatantly self-serving constitutional design. In addition to the stratagems described above, one may cite the extraordinarily strong immunity that the Czech framers granted themselves, requiring the consent of parliament before criminal prosecution of deputies on any matter whatsoever. “If the respective chamber declines its consent, criminal proceedings are rendered impossible forever.” (Art. 27.4) Not content with this protection, in the spring of 1993 parliament “adopted an amendment to the customs law that made it mandatory for deputies to declare imported goods, but barred customs **officials** from searching deputies’ personal belonging, including suitcases” (RFE 12.11.1993).³³ When Havel refused to sign the law, parliament did not use its right to override his veto.

Less is known about the constitutional bargaining over the presidency.³⁴ After Havel’s resignation from the federal presidency, it was reported that he might accept the presidency of the Czech republic if that office was vested with more than symbolic powers. He was also said to prefer direct elections of the president. (RFE 3 1-7.1992.) The latter wish was not fulfilled. If we compare the power of the presidencies in the ex-

explain voting patterns at the convention than the economic interests of the framers themselves, although the latter are not negligible.

³³The supporters of the law argued that this provision would prevent the executive branch from harassing lawmakers. In this particular case, the harassing would not amount to much. We know from other countries, though, that harassment of lawmakers by the Internal Revenue Service can be an effective punishment and, presumably, an **effective** threat. The issue of how to insulate lawmakers from such pressures without encouraging unlawful behavior would be worth studying.

³⁴For some general comments on this issue, see my “Bargaining over the presidency”, East European Constitutional Review Fall 1993/Winter 1994.

Communist countries, as measured by a index based on their formal attributions, that of the Czech presidency falls in the lower half.³⁵ It is well known, however, that the real power of the president may deviate from the formal attributions, either because of accumulated traditions³⁶ or because of the personality of the office holder. For both reasons, Havel's real power is certainly greater than as measured by the formal index. The tradition from the First Republic that the President is heavily involved with foreign policy still lives on. Needless to say, Havel's personal stature also enhances his influence. One may conjecture that one reason why the formal powers of the presidency are relatively weak is that the framers anticipated these effects.

VII. Explaining; the break-up

In this concluding Section I return to the question of the break-up of Czechoslovakia into two independent states, to supplement the **narrative of** Section **V with a more analytical perspective. I shall survey and evaluate six different explanations** that have been put forward to account for the break-up. Some of them appeal to norms and motivations, others to cognitive factors, and still others to economic interests. For reasons that will become obvious, they are not necessarily rivals to one another. Some of the explanations are structural, in the sense of trying to show why a break-up was likely to occur sooner or later. Others are

³⁵ **James McGregor**, "The presidency in East Central Europe", RFE 14.1.1994.

³⁶ **See for instance** the chart in **Maurice Duverger**, "A new political system model: Semi-presidential government", in Arendt Lijphart (ed.), Parliamentary versus Presidential Government, Oxford University Press 1992, p. 147.

conjunctural, in the sense of trying to explain why it happened when it did. Within each category, the explanations may of course be combined.

1. A two-member federation is inherently unstable. It is very hard if not impossible to identify durable federations with only two member republics. Norway and Sweden between 1814 and 1905 does not count, because Norway was formally subordinated to Sweden. Belgium does not count, because with Brussels the Belgian federation has three members. It is not difficult to see why a stable federation needs at least three members. Suppose that in a two-state federation, the two states are of roughly equal size. This yields a potential for endless deadlock and struggle. Suppose on the contrary that one state is substantially greater than the other. If the federal structure is organized on the parity principle, the larger state will resent it. If it is organized on the proportionality principle, the smaller will resent it. On any of these three assumptions, the federation is permanently vulnerable. An external shock can easily make it unravel; and sooner or later a shock will occur that does make it unravel.

The argument may also be presented the other way around. With three or more member states, there is the possibility of shifting alliances and coalitions, so that all states will get their way some of the time. Note that the argument presupposes a sufficient amount of cross-cutting interests, so that different coalitions are formed on **different** issues. If that condition does not hold, we are in reality back to the two-state case. This observation explains the failure of the idea that was discussed in Czechoslovak political circles in 1991-92, viz. to create a three-state federation of Bohemia, Moravia and Slovakia. There was even talk of creating a total of five or **seven** republics. (These proposals were behind the inclusion of “Federation with more than two republics” as an

alternative in the 1992 poll.) The idea came to nothing, because it was **obvious that on all important issues these smaller republics would align themselves so as to reconstitute the Czech-Slovak divide. Moravia and Slovakia**, for instance, had hardly any substantive interests in common.

2. Long-standing hostility between Czechs and Slovaks caused the federation to break up. Some argue that given the cultural and political animosity between the two peoples, a divorce was inevitable. Now, it is **true that after talking to Czechs and Slovaks and reading the literature on** “the national question” in Czechoslovakia, one can easily write down a long list of mutual recriminations and resentments. During the First Republic, the Slovaks resented the fact that they were badly underrepresented in the administration and in the army. The Czechs on their side resented the fact that they were subsidizing Slovak development, and perhaps even more the fact that the Slovaks failed to be properly grateful for the assistance. The Slovaks, needless to say, perceived this attitude as patronizing and condescending. More generally, the Slovaks resented what they perceived to be a Czech perception of themselves as crude, backward and **uncultured**.³⁷ For their own part, they perceived the “sophisticated” Czech mode of life as a threat to religion and “family values”.

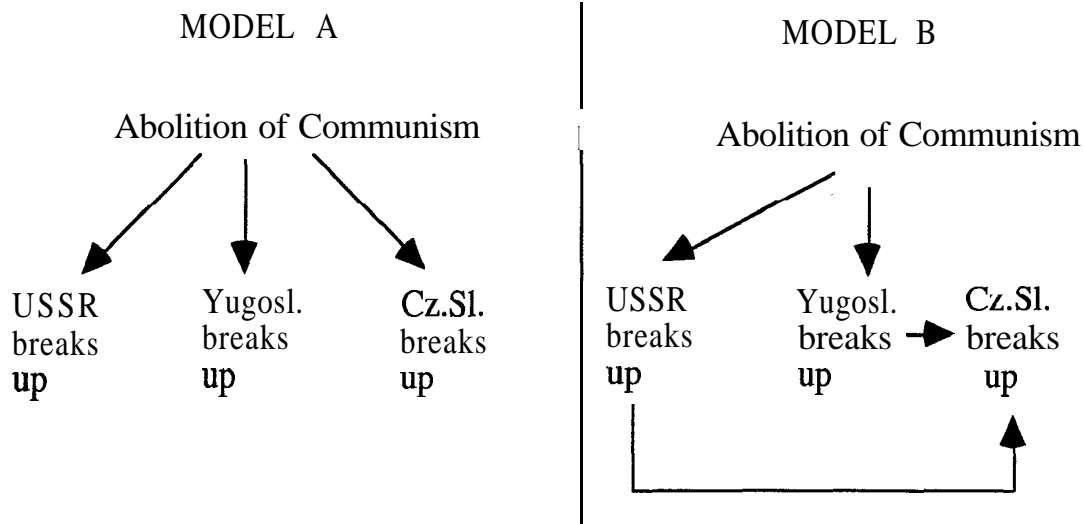
Later, Czech resentment was nurtured by the fact that on two successive occasions the Slovaks were perceived as allying themselves with the oppressor. During World War II, the Slovaks created a fascist state that collaborated closely with Nazi Germany. After **1968**, they were rewarded by the Communist party for their relative moderation during the Prague spring. In the first case, the Czechs felt that they suffered more than the

³⁷ On these issues, see Leff, National Conflict in Czechoslovakia, Ch.5: “Political cultures and mutual betrayal”.

Slovaks; in the second that the Slovaks, through their participation in the apparatus of repression, were actually instruments of their suffering. Moreover, the Czechs felt that these episodes were not simply a thing of the past. The celebration of the wartime state showed that the Slovaks had not overcome their fascist leanings; also, the greater Slovak resistance to “lustration” (**exposure of agents and informers from the Communist period**) showed that they did not really want to leave Communism behind themselves.

Yet these are cultural cliches that need to be approached with caution. The question is whether these attitudes were widespread and, **especially, whether the resentments were deeply felt. It would be easy to** come up with a similar list characterizing relations between Yankees and Southerners, and yet nobody would argue that secession is imminent or inevitable in the United States. As far as I can see, there is little or no evidence of visceral hatred between the Czech and Slovak peoples. The **“velvet divorce” was remarkably peaceful. In a poll from April 1994,** Slovaks ranked the Czech republic in first place as “the state or group of states with which your country should align itself most closely”. Czechs ranked Slovakia third, after the European Union and Germany. (RFE 8.7.1994) Although it is tempting to infer from the role of ethnic conflicts in the breakdown of the Yugoslav federation to the conclusion that similar forces must have been at work in Czechoslovakia, the inference would almost be certainly fallacious.

3. The breakdown of other ex-Communist federations created a model for the dissolution of Czechoslovakia. To see how this explanation differs from the preceding one, we may compare two models:



Model A represents the idea of a common causal mechanism in the breakdown of the Soviet, Yugoslav and Czechoslovak federations. According to one common variant of this model, Communism had ruthlessly suppressed any expression of cultural, ethnic, linguistic or **religious** conflicts . As soon as “the lid came off”, the accumulated tensions, inevitably, exploded, leading to the fragmentation of the artificially created federations. I doubt whether this picture is valid for the **USSR** or even for Yugoslavia. On the basis of what little I know about these countries, I believe that clever manipulation by opportunistic leaders counts for much more than secular ethnic hatred. Be this as it may, I have already indicated that I feel quite confident that the picture does not apply to Czechoslovakia.

Model **B** suggests that when the Soviet and Yugoslav federations started to disintegrate, for whatever reason, ideas of dividing Czechoslovakia emerged that otherwise would not have occurred. Once separation became conceivable, it soon became inevitable. Whether or not this argument is chronologically sound, it is quite possible that external

events lent consistence and plausibility to ideas that might otherwise have been dismissed as pipe dreams. The proposition is obviously difficult to test.

4. Separation was everybody's second preference. This explanation (or the closely related one discussed below) aims at dissolving the apparent paradox of a separation that takes place even though only a small minority in each republic preferred it over an arrangement that would allow the country to remain united. Now one might of course argue that separation was carried out by Klaus and Meciar against the wishes of their populations. Yet there is overwhelming evidence that these leaders are very sensitive to popular moods, and in any case they do not seem to have suffered electorally from their initiative. To this one might respond that the counter-separatist preferences were not very intense, i.e. that the voters simply did not care enough about the issue to punish their leaders for going against their wishes. It is true that by 1992 most people cared more about how the **economy** was doing than about the survival of the federation³⁸ and that there was a general lack of civic participation.³⁹ Hence the leaders could push the separation through without encountering much resistance. (Why the leaders would want to do that is the topic of the next two explanations.) While plausible, these arguments can be supplemented by a more fine-grained analysis of voter preferences.

³⁸Zora Butorova, "A deliberate 'yes' to the dissolution of the CSFR?", Czech Sociological Review 1 (1993), 58-72, at p.60.

³⁹Martin Butora and Zora Butorova, "Slovakia: The identity challenges of the newly born state", Social Research 60 (1993), 70536, at p.721-22.

In June 1990, the percentage distribution of preferences was as follows (source RFE 510.1990) :

	Throughout Czechoslovakia	Czech Republic	Slovak Republic
Common state with large powers vested in central government	33	42	16
Common state with large powers vested in Czech and Slovak governments	34	30	41
Confederation	21	16	30
Two completely independent states	6	5	8

In the summer of 1992 (after the elections), the constellation was as follows (source: RFE 30.10.1992):

	Czech Republic	Slovak Republic
Unitary state with one government and one parliament for country	38%	14%
Federation of Czech Republic and Slovakia	19%	27%
Federation of more than two republics	18%	8%
Confederation	3%	30%
Split-up	8%	16%

In the first poll, separation is by far the least popular of all options, in both republics. (Perhaps at this stage it was in fact little more **than a pipe dream.**) **In the second poll, a different pattern has emerged.** Now, Czechs prefer separation to confederation, which is the most preferred alternative for the Slovaks. Conversely, Slovaks prefer separation to a strong unitary state, which is the most preferred alternative for the Czechs. Although it is not true that separation is everybody's second **preference, each group prefers separation to the option most favored by the other.**

When there is an option that is everybody's second preference, there is a tendency for that option to be realized. Marx observed that when there is a struggle between two royal contenders, the only solution they can agree on may be a republican form of government.⁴⁰ When ex-colonial nations with tribal divisions have to choose an official language, the language of the former colonial power may be the least divisive solution. Because the second-best principle does not take account of the intensity of preferences it cannot be asserted as an invariable rule, but it does offer a **convenient focal point in situations where the possibility of misrepresenting one's preferences makes it hard to communicate their intensity with much credibility.** On similar grounds, an option that each party prefers over the other party's most preferred option may come to acquire a salience by virtue of which it emerges as the solution to the conflict. To the extent that the Czech and Slovak citizens were aware of each other's preference rankings, this property of the separation option may explain why it was so easily accepted by the populations.

⁴⁰The Eighteenth Brumaire, in Marx and Engels, Collected Works, vol. 11, London: Lawrence and Wishart 1970, p. 166.

5. The country split over the issue of market reforms.

According to this explanation, the Czechs wanted separation to speed up the market reforms and the Slovaks wanted separation to slow them down. The first part of the argument, as stated by Jan Obrman, goes as follows. After the elections of 1992, the “distribution of seats between right-of-center parties and left-of-center and nationalist parties in the Federal Assembly would make maintaining the rapid pace of economic reform next to impossible in the medium to long term. Because economic reform is . . .Klaus’s first priority, it is undoubtedly in his interest to abandon the deadlocked federal center by initiating Czechoslovakia’s disintegration.” (RFE 10.7.1992) The second part of the argument **asserts that Slovaks** welcomed separation as a means of insulating themselves from the hardships of market reform; or, perhaps more accurately, that Meciar could play on fears of hardships to justify the breakup. Although resistance to reform may have been due to myopia or to a lack of understanding that in the **long run prosperity depended on reform**⁴¹, the **short-run tradeoffs had** more political salience.

The two parts of the argument are obviously in some tension. For both to be true, the pace of reform in a united post-1992 Czechoslovakia would have to be slow enough to frustrate the Czechs and fast enough to frustrate the Slovaks. My impression is that there is more to the second part of the argument than to the first. At this point, we may note that the 1968 federal constitution gives veto power to the Czechs - even a minority of the Czechs - no less than to the Slovaks. Because Klaus could easily muster the required number of votes in the Czech section of the upper house of the federal assembly, the impressive reforms achieved in

⁴¹ Butorova, “A deliberate ‘yes’ to the dissolution of the CSFR?“, p.62.

1990-1992 were, for all practical purposes, irreversible. The question is obviously whether there were further, indispensable reforms that had to be carried out and that would have been blocked by the Slovaks in the federal assembly. Although it is hard to know what Klaus thought at the time, the most plausible answer, judging from what he did later, is that he could have carried on his reforms within the federation. No major institutional reforms have been carried out in the Czech Republic. In fact, the very low rate of unemployment in the country is mainly due to the **slow** and cautious pace of reform, delaying the restructuring and dismantling of inefficient enterprises (RFE 22.7.1994).

6. The Czechs did not wish to go on subsidizing Slovakia.

According to this explanation, the country broke up because the Czechs were getting fed up with the combination of Slovak demands for Czech subsidies and Slovak nationalism. A typical report, which I heard echoed in many individual conversations, is the following. “On September 19 [1991] Czech PM Petr Pithart said that the Czech government would propose that the system whereby the Czech Republic subsidizes the economically weaker Slovak republic be abandoned in 1992. He emphasized that ‘helping a weaker partner’ would have been continued to be accepted by the Czech side as a matter of course, but that such assistance was becoming impractical [sic] as calls for independence intensified in Czechoslovakia.” (RFE 11.10.1991.) Psychologically, the situation was perceived as similar to that of a parent whose rebellious child is constantly coming home to ask for money, trying to have its cake and eat it too.

There can be no doubt that such ideas played a role on the Czech side. For Klaus himself, the Slovaks as a permanent irritant may have been more salient than the Slovaks as an obstacle to reform. The

Slovak side of the question is more complicated. The initial impetus to separation did, after all, come from the Slovaks who, if the Czech perception is correct, had the most to lose from it. It is not unknown for the more prosperous region of a country to opt for secession, but Slovakia presents the opposite picture, a “reverse Katanga”. Why did they insist on this (allegedly) self-destructive course?

One answer is that they were threatening with secession in **order to improve their share both of power and of the federal budget**. This answer raises two further questions. First, what would the Czechs lose by secession? One answer lies in the fact that for most practical purposes, Prague represented Czechoslovakia on the international scene. The prestige and bargaining power of a country being linked to its size, a Czech republic would **count** for less than a Czechoslovak federation. The Czechs, in fact, wanted to speak both for themselves and for the Slovaks (an attitude, by the way, that infuriated the Slovaks unspeakably). Another answer, further discussed below, is that the Czechs might even lose in material terms.

Second, how could the Slovak threat be made credible’! After all, the threat “Your money or my life” is not one that is frequently heard on the streets. (It might be made successfully, though, by the rebellious child referred to above.) One general reply to this question is that if a negotiator can with some plausibility rephrase the threat as a warning, he may get away with it.⁴² (Another reply, relying on perceptions of fairness, is considered below.) If a trade union leader tells the manager that he will be unable to control his members unless they get what he demands, this is

⁴²See my “Strategic uses of argument”, forthcoming from W.W. Norton in K. Arrow et al. (eds.), Barriers to the Negotiated Resolution of Conflicts.

formally a warning rather than a threat. Although the manager may suspect that the leader can in fact influence his members, he also has to take **account of the possibility that the latter may in fact be as intransigent as the** leader makes them out to be. Specifically, the leader may have deliberately raised the expectations of his members in order to be able to say, truthfully, that he cannot control them. Similar strategies may be exploited by a nationalist leader, referring with regret to separatist elements that **need to be bought off with influence or money. Although I have no specific** evidence that Meciar adopted this strategy, I have been told in general terms that some of his actions fall under this rubric.

Another answer denies the premise of Czech subsidies to Slovakia. In an opinion poll from September 1991, both Czech and Slovak citizens agreed (about two thirds of the respondents in each republic) on the normative statement that “One republic ought not to have to pay for the other”. When asked the factual question whether “The present system favors Czechs”, only 12 % of the Czechs agreed as against 67 % of the Slovaks (RFE 31.1.1992). The Slovaks, in fact, believed that they were **being exploited by the Czechs rather than the other way around. Now** exploitation and subsidization are not the same thing. Subsidies are a **zero-sum** operation: the subsidizer loses what the subsidized gains. In exploitation, though, both parties can gain compared to a situation in which they do not **interact at all.**⁴³ **The situation is exploitative if the division of** gains from cooperation is, in some appropriate sense, unfair and unjust.

⁴³ Marx himself observed that in international trade; “the richer country exploits the poorer one, even when the latter gains by the exchange” (Theories of Surplus-Value, vol.3, London: Lawrence and Wishart 1972, p. 106). .

Although I have met Slovaks who say that their country was a net subsidizer of the Czech lands, this claim appears implausible. The question of an unfair division of the gains from federation is more complicated. An ironical aspect of this issue is that many Slovaks now complain of being saddled with the unproductive heavy industries that were bestowed on them as a favor after 1968. A related aspect is the often-made claim that Slovakia suffered because of the idealistic decision of Havel and his foreign minister Jiri Dienstbier to cut down on the Slovak arms industry, so as not to appear as a provider of weapons to international terrorism. (For the factual accuracy of this claim see RFE 24.9.1993.) Also, Slovaks regularly claim that all foreign investment passed through Prague and that the Czechs were unwilling to share it with the Slovaks.

If on balance it turned out that the Czechs gained a lot and the Slovaks only a little by Czech-Slovak economic cooperation, the Slovaks would have a strong case. As far as I know, the calculation has not been made. My guess is that if it was made, that is not how it would come out. Conceivably the Czechs might appear as net losers, in the sense that their subsidies to Slovak would exceed their gains from the cooperation. But the actual numbers are irrelevant for the explanatory issues that concern me here and in which only perceptions and beliefs matter. I believe that all Czechs believed that Slovaks gained from the federation and that most Czechs believed that they would be better off without the Slovaks. I also believe that many Slovaks thought they were being unfairly treated, but that only a few thought they would actually be better off on their own. Now, if you believe you are being exploited, you will first try to change the terms of trade. If that effort fails, you may want to bring the exploitative relationship to an end even if you believe you will lose in

material terms. If the exploitation is seen as compounded by patronizing and condescending attitudes, your willingness to take a loss will be even greater. If you can **persuade** the opponent that you are willing to take a loss for the sake of maintaining self-respect, you may not have to take the loss because the threat of secession now becomes credible. Whether you can persuade him without actually carrying out the threat is a different matter.

Overall assessment. Among the explanations that I have canvassed, only the second can be dismissed as implausible or unimportant. The first explanation does not have much bite in accounting for the actual breakup, but it does suggest that Czechoslovakia was particularly liable to encounter the kind of problems that go into the other, more specific explanations. The third, cognitive explanation may have some merit; it is difficult to assess how much. The fourth explanation helps us understand why the leaders could go against the popular wish to keep the country together, without much risk to their political careers. The fifth and sixth explanations, finally, are located in the intersection between economics, politics and psychology. They address themselves both to the perceptions and motivations of the political leaders and to the attitudes of the citizens.

The play of personalities obviously also mattered: Havel's disregard of tactical matters; Meciar's brinkmanship and pride; Klaus's single-minded obsession with markets. I cannot assess the relative importance of these idiosyncratic factors compared to the more systematic forces, any more than I can rank the latter according to their relative importance. I cannot tell whether the breakup of Czechoslovakia was more like a Greek tragedy, logical and coherent although opaque to the agents themselves; or more like a tale told by an idiot, full of sound and fury and little else.